IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION ST.NO.21445 OF 2006
IN
CIVIL REVISION APPLICATION NO.1191 OF 2002
WITH
WRIT PETITION NO. 6571 OF 2006

Ruia Fiscal Services Pvt.Ltd. ..Applicant.

V/s.

Cormorant Investment Pvt.Ltd. ..Respondent.

WITH

REVIEW PETITION ST.NO.21438 OF 2006
IN
CIVIL REVISION APPLICATION NO.1190 OF 2002
WITH
WRIT PETITION NO.6572 OF 2006

Sri Ram Business Pvt.Ltd. ..Applicant.

V/s.

Cormorant Investment Pvt.Ltd. ..Respondent.

Mr. P.K.Dhakephalkar i/b. Sachin V. Dhakephalkar, advocate for the petitioners.

Mr. Navin Parikh i/b Shri Haresh Mansukhani, advocate for the respondent.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 12, 2006.

P.C. :

1. Heard counsel for the parties.

2. These review petitions take exception to the Judgment and order passed by this Court on 28th July,

2006 while disposing of the Civil Revision Application Nos. 1190/02 & 1191/02. Indeed, one of the ground taken in the Review Petitions is that the officer who was dealing with the matters had left the company; on account of that the matter remained unattended. For the same reason, I have condoned the delay in filing review petitions. Even if that ground was to be accepted for the purpose of Review Petitions, the learned counsel appearing for the review petitioners was called upon to point out the infirmity in the order passed by this Court on merits.

3. After having considered the rival submissions, I have no hesitation in taking the view that the conclusion reached in the order under review is correct and warrants no interference. One of the reason stated in the order is that the review petitioners failed to challenge the finding of fact recorded against them by the lower Court on the factum of service of suit notice. To get over that position, perhaps, the review petitioners have now been advised to file two separate Writ Petitions to question the correctness of the adverse finding recorded by the lower Court. It is common ground that if these Review petitions were to be rejected,

the reason to be stated for dismissing the Review Petitions would directly affect the outcome of the Writ Petitions filed by the Review Petitioners. In this backdrop, counsel for the Review Petitioners requested this Court to take up the Writ Petitions for hearing alongwith the present Review Petitions for admission, as overlapping questions were involved. By consent of the parties, therefore, even Writ Petitions are taken up for hearing alongwith this Review Petitions for admission.

4. In the first place, no good reason is forthcoming as to what prevented review petitioners to assail the adverse finding of fact recorded against them in respect of service of suit summons. Be that as it may, in my opinion, the finding of fact recorded by the Court below on the factum of service of suit summons is unexceptionable. The record supports that position. The Court below has noted on the basis of the Roznama that in fact the representative of the company had appeared in the proceedings and sought adjournment. That fact is indisputable. If it is so, it is too late in the day to consider the grievance of the Review petitioners that the company was not served with the suit summons. If the company was not served with the suit

summons, there was no reason for the representative of the company to appear in the proceedings and ask for adjournment, which indulgence was granted by the trial Court. However, latter on the company chose to remain absent in the proceedings, which impelled the Court to proceed against the company exparte.

5. Having regard to all the attending circumstances, I have no reason to take a different view than the one already recorded on 28th July, 2006. Accordingly, Review Petitions as well as Writ Petitions filed before this Court are dismissed being devoid of merits. Ordered accordingly.